

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
PAGING COALITION)	CC Docket No. 01-346
)	
Request for Declaratory Ruling that)	
Termination by Verizon of Type 3A)	
Interconnection Service Would Be Unjust)	
and Unreasonable, in Violation of Section 201)	
of the Communications Act, 47 U.S.C. §201,)	
and Otherwise Unlawful)	

To: The Commission

**REPLY COMMENTS OF BOBIER ELECTRONICS, INC., BUSINESS
SERVICE CENTER, INC., CONESTOGA MOBILE SYSTEMS,
INC., COM-NAV, INC., REDI-CALL COMMUNICATIONS
COMPANY AND SALISBURY MOBILE TELEPHONE, INC.**

Bobier Electronics, Inc., Business Service Center, Inc., Conestoga Mobile Systems, Inc., Com-Nav, Inc., Redi-Call Communications Company and Salisbury Mobile Telephone, Inc. (the "Paging Companies"), by their attorneys, hereby submit their comments in reply to the comments filed in the above-captioned proceeding.

With but two exceptions (Verizon and Sprint Corporation), all of the commenters support the petition of the Paging Coalition for a declaratory ruling. The oppositions of Verizon and Sprint both flow from the same premise, namely, that Type 3A interconnection¹ is not interconnection at all² but is simply a billing option.³ Both Verizon and Sprint claim that this conclusion has been embraced by this Commission in

¹ Type 3A interconnection will interchangeably be referred to herein as "LATA Wide Paging," "wide-area calling" or, as Verizon refers to it, "reverse billing."

² Verizon Opposition at 5-6; Sprint Comments at 2.

³ Verizon Opposition at 3; Sprint Comments at 2,3.

TSR Wireless v. U S WEST, 15 FCC Rcd 11166, and that is where the issue begins and ends. Verizon also claims that LATAWide Paging is unworkable in a competitive local exchange environment⁴ where local number portability (LNP) prevails.⁵ However, as will be shown below, Verizon and Sprint are mistaken in their legal analysis and misguided as to the claimed unworkability of maintaining LATAWide Paging service beyond October 1, 2002 – Verizon’s threatened service termination date.

Verizon Defines “Interconnection” Too Narrowly

Verizon’s narrow definition of interconnection is unavailing. Verizon observes that the Commission’s definition of interconnection in Section 251 of the Communications Act, as reflected in Sections 51.5 and 20.3 of the Commission’s Rules, is limited to the direct or indirect physical connection between networks to allow them to exchange traffic. Verizon would thus exclude LATAWide Paging service from the Commission’s interconnection regulations because it does not affect the physical connection itself. Congress was not so short-sighted, however, in that the savings provision of Section 251 (Section 251(i)) provides that “[n]othing in [Section 251] shall be construed to limit or otherwise affect the Commission’s authority under section 201 [of the Communications Act].”

This is significant because it establishes that the cloak of protection under the Commission’s interconnection regulations extends beyond the physical connection itself. It is folly to suggest that services, such as LATAWide Paging, that are not part of the physical connection itself are excluded from the Commission’s Rules that protect carriers who interconnect with Verizon. Thus, Section 201(b) of the Communications Act extends the Commission’s protection not only to the physical connection itself, but also

⁴ Verizon Opposition at 2, 4-5.

to the “charges, practices, classifications and regulations for and in connection with” interconnection services, and any such “charge, practice, classification, or regulation that is unjust or unreasonable is . . . declared to be unlawful.” It seems clear, therefore, that the congressional intent was to provide broader protection, rather than to limit it narrowly as Verizon and Sprint maintain.

Prior Commission actions regarding Section 201 compliance indicate that, in determining what serves the public interest, services beyond the physical connection have been considered and included under the cloak of interconnection. For example, in the *Specialized Common Carrier Proceeding*, the Commission relied on section 201(a) in requiring the LECs then affiliated with AT&T to provide other common carriers with the interconnection facilities *and the services* that the other carriers needed to provide private line service.⁶ The Commission recently relied on this decision as evidence that it had authority to compel carriers to make a cross-connect service generally available.⁷

Among its broad reforms, the Telecommunications Act of 1996 enacted a competitive principle embodied by the dual duties of nondiscrimination and interconnection. Section 201(a) provides that “[i]t shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor.” Section § 251(a)(1) provides that “[e]ach telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”

⁵ Verizon Opposition at 4.

⁶ *Establishment of Policies and Procedures for Consideration of Application to Provide Specialized Common Carrier Services in the Domestic Public Point-to-Point Microwave Radio Service and Proposed Amendments to Parts 21, 43 and 61 of the Commission's Rules*, 24 F.C.C.2d 318; 1970 FCC LEXIS 1488 (1970).

⁷ *See Deployment of Wireline Services Offering Advanced Telecommunications Capability* (Specialized Common Carrier Proceeding) 16 FCC Rcd 15435; 2001 FCC LEXIS 4303; 24 Comm. Reg. (P & F) 417 (rel. August 8, 2001) at para. 68.

Together, these provisions mandate a network architecture that prioritizes consumer choice, demonstrated by vigorous competition among telecommunications carriers.

As applied to the paging industry, Verizon brushes this principle aside. Verizon believes that because the physical network will not change, “nothing will change.”⁸ To the contrary, most of the commenters in this proceeding believe, citing justification, that the paging industry will be adversely affected by elimination of LATAWide Paging service. Moreover, the impact of requiring Verizon to continue this service for paging carriers is very small since, as Verizon acknowledges, paging companies comprise only five percent of its total CMRS reverse billing usage.⁹ However, continuing this service fulfills the dual duties of nondiscrimination and interconnection, ensures continued competition in the paging market and provides consumers with choice and low cost service. Accordingly, Verizon is duty-bound to continue providing this service to paging carriers.

States Have Concluded That Interconnection Encompasses Reverse Billing

While Verizon may have persuaded one state commission that reverse billing is not a form of “interconnection,”¹⁰ other states have reached the opposite conclusion.¹¹ When Ameritech Michigan asserted that it was under no obligation to continue offering reverse billing, the Michigan Public Service Commission stated that reverse billing was

⁸ Verizon Opposition at 6.

⁹ *Id.* at 4.

¹⁰ Verizon Opposition at 7.

¹¹ The term “reverse billing” is really a misnomer. It suggests that the party billed for the service is other than the one who receives it. That is not the case here. The paging carriers both receive the service as part of their interconnection arrangement and pay for the service as well. Stated differently in this context, no one receives LATAWide Paging service other than through interconnection with Verizon.

in fact a part of interconnection.¹² Ameritech Michigan alleged, just as Verizon has here, that a billing arrangement is not necessary for physical traffic exchange, and therefore is not part of interconnection. The Michigan Commission also rejected that argument stating that, even if interconnection did consist only of physical arrangements to connect networks, both the Michigan Telecommunications Act and Section 251(c)(2) of the Communications Act not only provide for the setting of rates of interconnection and regulation of those rates, but that Ameritech Michigan was also required by Section 251(c)(2)(B) to offer reverse billing as part of interconnection because it was technically feasible to do so.¹³

Termination of LATAWide Paging Will be Inefficient and Uneconomic

While the physical network connections will remain if Type 3A interconnection service is terminated, as Verizon argues, it is nevertheless inescapable that the ability of paging carriers to use those physical connections in an efficient and economic manner will be lost. To avoid toll calling, the carriers would unavoidably have to bring in additional NXX codes from each rate center within the LATA and each pager would have to be assigned multiple numbers, one for each rate center. The inefficiencies resulting from such a development have been aptly described by the commenters.¹⁴

Moreover, there are other potential problems that Verizon simply passes off as a nonsensical “parade of horrors.” Among these, not already described, are those associated with the capacity of the paging carrier’s terminal. Presently, the trunk group associated with LATAWide paging service carries traffic for all calls from within the

¹² *CenturyTel Wireless, Inc., and Thumb Cellular for arbitration of interconnection agreements with Ameritech Michigan*, Case No. U-11989 1999 Mich. PSC LEXIS 249 (September 14, 1999).

¹³ *Id.*

¹⁴ Petition at 4, Paging Companies’ Comments at 5, Comments of Arch Wireless at 6-7 and Comments of Virginia Cellular LLC at 5-6.

LATA. Each trunk port connected to this group may handle an incoming call originating anywhere in the LATA. This trunk group is usually fed from Verizon's tandem. Using NXX codes from multiple rate centers (as many as may be required to provide toll-free access to all or a significant portion of the LATA), a separate trunk group carrying numbers from each serving central office (each selected rate center) would be required.

As these trunk groups are unique, it then becomes necessary to provide a separate port on the paging terminal to receive each of the trunks from each trunk group. In this arrangement, many more trunks would be required in order to allow for peak traffic over each trunk group than in the common trunk group originating from Verizon's tandem. Instead of all trunks sharing common traffic, individual trunk groups may be at or above capacity at the same time that some trunks in other groups are inactive. An estimation of traffic would be required to determine the number of trunks needed in each trunk group. In order to accomodate enough trunks in these unique groups, additional ports would need to be added to the paging terminal resulting in considerable investment and perhaps obsolesence of the paging terminal due to port exhaustion. Some paging carriers may find considerable difficulty upgrading their paging terminals given the fact that certain paging terminal manufacturers are no longer in the business (e.g., Glenayre and Motorola).

800 Services are Not an Adequate Substitute

Verizon nevertheless claims that the Paging Coalition and similarly situated paging carriers will still have reverse-billed services available to them, after the termination of LATAWide Paging in the form of 800 services. However, the use of 800 numbers is not a viable option for most paging carriers, including the Paging Companies. The pool of 800 numbers continues to decline; and the use of thousands of new 800

numbers in this context would be a waste of scarce numbering resources. The use of 800 numbers would also require the dialing of additional digits (eleven instead of seven) and the routing of calls through an interexchange carrier. The former would lead to customer dissatisfaction and the latter would increase the cost of providing paging service at a time when profit margins in the paging industry are already slim.¹⁵

Verizon Has Not Justified Termination of Service

The end results cannot be justified, especially in view of Verizon's flawed justification for terminating LATAWide Paging service to paging carriers. In that regard, Verizon and Sprint still cling to the notion that wide-area calling services will be too expensive and difficult to administer once local number portability (LNP) goes into effect, thereby justifying the termination of LATAWide Paging service.¹⁶ Indeed, this appears to be Verizon's only justification for such action. Whatever justification that may or may not have with respect to other commercial mobile radio services, it clearly has no applicability to paging service. Verizon and Sprint seemingly do not want to acknowledge that the Commission's LNP requirements, as set out in Section 52.21 of the Commission's Rules, do not apply to paging carriers.¹⁷ Nevertheless, it is safe to assume that paging carriers will not offer number portability to their customers and will not port their numbers to other LECs. That being the case, there are no public interest considerations favoring Verizon, thereby leading to only one conclusion, namely, that Verizon's termination of LATAWide Paging service would be unjust and unreasonable and therefore unlawful under Section 201(b) of the Communications Act.

¹⁵ Comments of Arch Wireless at 7-8.

¹⁶ Verizon Opposition at 2,4; Sprint Comments at 2.

¹⁷ The fallacy of Verizon's stated justification for its threatened service termination suggests an undisclosed justification. Its subsidiary, Verizon Wireless, makes no bones of the fact that it provides paging and other text messaging services to its cellular subscribers. *Quare* whether Verizon's termination of LATAWide Paging Service is simply an anticompetitive ploy.

TSR Wireless is Not Controlling and Should be Revisited

Verizon's and Sprint's reliance on the Commission's decision in the *TSR Wireless* case is overly optimistic. In that case, the only related issue was whether the prohibition in the Commission's Rules against charges for LEC-originated traffic also prohibited LECs from charging paging carriers for wide-area calling services, such as LATAWide Paging. No issue was raised as to whether LECs were under an obligation to provide wide-area calling services and so that issue was neither briefed, nor argued by the parties to the litigation. In concluding that the Commission's Rules do not compel a LEC to provide wide-area calling or similar services without charge (which is not disputed in the instant proceeding), the Commission, in effect, threw in as an aside that LECs are not obligated to provide such services at all. This was an entirely gratuitous statement made without the benefit of legal argument that had nothing to do with the controversy. As such, it is simply *dictum* and does not establish a rule of law that can be relied upon by Verizon and Sprint as controlling authority.¹⁸ It is respectfully submitted that the Commission was mistaken as to the obligation of LECs to provide wide-area calling services and that its *dictum* in *TSR Wireless* should be revisited and reversed. At the very least, the Commission should now hold that where, as here, a LEC is already providing wide-area calling services, such services may not be terminated against the wishes of the connecting carrier without the Commission's determination, under Sections 201 and 214 of the Communications Act, that such termination is in the public interest.¹⁹

¹⁸ Verizon's claim in its Comments, at 7, that the Paging Coalition does not mention the *TSR Wireless* case in the Petition is indeed curious. Section 5 of the Petition, at 18, is devoted entirely to a discussion of the case and a concession that Verizon has no obligation to provide Type 3A interconnection free of charge.

¹⁹ In this connection, *see* the Paging Companies Comments at 6-7.

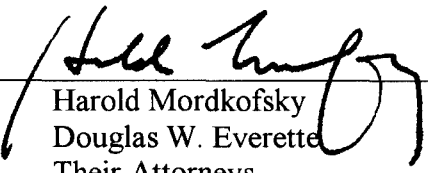
Conclusion

The Paging Coalition has made a compelling case for the declaratory ruling requested. Verizon's argument that LATAWide Paging is not an element of interconnection is unconvincing, as demonstrated by the petitioners and most of the commenters. Its stated justification for an action that will wreak havoc on paging carriers in small-to-medium size markets is legally unsupportable and indeed makes no sense whatsoever, thereby suggesting perhaps an ulterior motivation. There is accordingly more than ample justification for grant of the relief requested by the petitioners.

Respectfully submitted,

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COM-NAV, INC.
REDI-CALL COMMUNICATIONS
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